Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	

AT&T CORP. REPLY COMMENTS

Pursuant to Section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, AT&T Corp. ("AT&T") hereby submits its reply to comments that were filed on AT&T's Petition for Reconsideration in the above-captioned proceeding.[1/]

In its Petition, AT&T asked the Commission to reconsider the decision it made in the *Third NRO Order* to permit incumbent local exchange carriers ("ILECs") to shift their costs of thousands-block number pooling to their interexchange carrier ("IXC") competitors by adding them to access charges.[2/] AT&T demonstrated that this cost recovery scheme violates both Section 254(e) of the Communications Act, which requires the Commission to remove all subsidies from access charges, and Section 251(e)(2), which requires numbering administration costs to be recovered from all telecommunications carriers in a competitively neutral manner.[3/]

Only one party filed comments on the various petitions for reconsideration that were submitted in this proceeding. That commenter, WorldCom, Inc., fully supports AT&T's request that the Commission reverse its cost recovery decision, stating that "there is no reason, in law or

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1/ AT&T Corp. Petition for Reconsideration, CC Docket No. 99-200 (filed May 6, 2002) ("Petition").

2/ *Numbering Resource Optimization*, 17 FCC Rcd 252, ¶¶ 25, 38-41 (2001) ("*Third NRO Order*").

3/ Petition at 2-5.

policy," why IXC customers should be forced to subsidize network upgrades made by ILECs to provide thousands-block number pooling.[4/] Like AT&T, WorldCom questions the Commission's conclusion in the *Third NRO Order* that costs incurred by ILECs to provide number pooling (as opposed to local number portability) are somehow "access-related."[5/] As WorldCom points out, the Commission itself negates that finding by asserting a few paragraphs later that pooling "results from extraordinary growth of subscribership and the provision of new services in recent years, as well as the entry of new carriers that require blocks of numbers in each rate center."[6/] IXCs had nothing to do with subscriber growth, new services, and competitive entry in the local exchange market.[7/]

Reconsideration of the Commission's decision is especially important now because, as both AT&T and WorldCom have discovered over the past three months, the ILECs apparently expect long distance carriers to subsidize enormous network expenditures they have made that have a tenuous, at best, connection to pooling implementation. Indeed, notwithstanding the *Third NRO Order*'s insistence that the amounts involved in pooling recovery would be minimal, if there were any at all,[8/] the Wireline Competition Bureau ("Bureau") has allowed tariffs filed by BellSouth and Sprint to go into effect, which collectively seek almost $140 million in exogenous adjustments.[9/] Verizon, which wants to recover tens of millions of dollars for

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4/ WorldCom Comments at 1.

5/ WorldCom Comments at 1.

6/ WorldCom Comments at 2 (citing *Third NRO Order*, ¶ 36).

7/ WorldCom Comments at 2; Petition at 3.

8/ *Third NRO Order*, ¶ 25.

9/ *BellSouth Telecommunications, Inc., Tariff No. 1, Transmittal 629*, WCB/Pricing No. 02-15, Order on Reconsideration (rel. June 7, 2002) ("*BellSouth Reconsideration Order*"); Public

expenditures allegedly made in 1998 and 1999 (before the Commission mandated, or established the technical standards for, thousands block pooling), has a tariff pending that requests a $75 million exogenous adjustment.[10/] And Qwest recently withdrew its $92 million tariff after it had been designated for investigation and after AT&T had responded to its direct case.[11/] A new Qwest tariff is expected soon.[12/]

WorldCom is correct that "[t]he idea that long distance providers and their customers should guarantee the bottom lines of monopoly local exchange carriers, belongs to a different era. This outmoded philosophy has a no place in the world envisioned by Congress in 1996."[13/] As the U.S. Court of Appeals for the Fifth Circuit has held on three occasions, "the plain language of Section 254(e) does not permit the Commission to maintain any implicit

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Notice, *Protested Tariff Transmittals Actions Taken*, WCB/Pricing No. 02-19 (rel. July 1, 2002). In light of the myriad deficiencies in the BellSouth tariff, AT&T also is submitting today an Application for Review and Motion for Stay of the Bureau's *BellSouth Reconsideration Order*.

10/ *See Verizon Telephone Companies*, Transmittal 214, AT&T Corp. Petition to Reject or Suspend Tariff (filed July 5, 2002).

11/ Qwest Tariff FCC No. 1, Transmittal 120, WCB/Pricing, Special Permission 02-095 (July 3, 2002).

12/ In its July 5, 2002 petition opposing Verizon's second pooling tariff, AT&T emphasized that the review process surrounding all the ILEC tariffs has been so onerous and unfair that AT&T has been unable to protect itself from ILEC over-recovery. *See Verizon Telephone Companies, Transmittal No. 214*, AT&T Corp. Petition To Reject and Suspend Tariff at 1, 7, nn. 2, 13 (filed July 5, 2002). As AT&T noted, BellSouth, Sprint, and Verizon each filed, withdrew, and then re-filed pooling tariffs in rapid succession, requiring AT&T to comb through and respond to six tariffs under the Bureau's expedited review schedule. In addition, the Bureau recently granted Qwest's request to withdraw its tariff *after* AT&T filed a petition opposing the tariff, *after* the Bureau had designated it for investigation, and *after* AT&T had submitted its response to Qwest's direct case (in which Qwest made changes to the tariff and provided dozens of pages of additional material). Although each of the ILECs' subsequent tariffs has sought slightly less in exogenous adjustments than the first, not one has addressed the legal, factual, and mathematical concerns raised by AT&T. Nevertheless, the Bureau appears inclined to ignore these defects and, thus far, has allowed two facially unlawful ILEC tariffs to take effect.

13/ WorldCom Comments at 2-3.

subsidies."[14/] Nor does requiring IXCs to act as funding source for ILEC network operations comply with Section 251(e)(2)'s competitive neutrality requirements. In fact, the Commission's pooling cost recovery scheme will cause substantial market distortions, disadvantaging IXCs in general, which are increasingly competing with wireless carriers for the same customers, and AT&T in particular, which has the largest share of the long distance market.

Although only one set of comments on the petitions for reconsideration – that of WorldCom – was filed in this proceeding, Verizon earlier submitted an *ex parte* urging the Commission to reject AT&T's Petition on timeliness grounds.[15/] Verizon argues that AT&T submitted the Petition after the *Third NRO Order* reconsideration deadline, and that the Commission has no authority to extend or waive the deadline.[16/] Verizon is wrong.

AT&T's Petition is procedurally proper because it was timely filed in connection with an order in which the Commission, on its own motion, had reopened and reversed findings made in the *Third NRO Order*.[17/] The Commission's subsequent findings in the *Third NRO Order on Reconsideration*, although not directly about cost recovery, have the potential to affect the ILEC pooling costs that will be considered eligible for recovery through access charges. Thus, the

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14/ Petition at 2 (citing *COMSAT Corp*. v. *FCC*, 250 F.3d 931, 938 (5th Cir. 2001); *Alenco Comm.* v. *FCC*, 201 F.3d 608, 623 (5th Cir. 2000); *Texas Office of Pub. Util. Counsel* v. *FCC*, 183 F.3d 393, 425 (5th Cir. 1999)).

15/ Verizon Comments at 1-2 (filed May 20, 2002). AT&T filed its Petition on the *Third NRO Order on Reconsideration* in this docket, *Numbering Resource Optimization*, 17 FCC Rcd 4784 (2002), but acknowledged that its concerns were primarily with the cost recovery decision in the *Third NRO Order*. *See* Petition at 1, n.19.

16/ Verizon Comments at 1, n.4.

17/ *See Third NRO Order on Reconsideration*, ¶ 1 ("On our own motion, we reconsider our findings in the *Number Resource Optimization Third Report and Order* regarding the . . . thousands-block number pooling requirements for carriers in the 100 largest Metropolitan Statistical Areas (MSAs).").

Commission's *sua sponte* decision in *Third NRO Order on Reconsideration* implicitly reopened – and subjected to reconsideration – the access charge cost recovery regime mandated in the *Third NRO Order*.[18/]

Even if the Commission deems the Petition to be untimely, moreover, there is nothing to preclude it from considering the important issues raised by AT&T and seconded by WorldCom. Indeed, as AT&T pointed out in its Petition, on previous occasions the Commission has acknowledged that it should hear untimely petitions "if they raise substantial public interest questions" and are filed "within the time that the Commission could proceed on its own motion."[19/] Since the *Third NRO Order* petitions were not yet placed on public notice at the time of AT&T's filing, "the Commission retain[ed] jurisdiction to reconsider its own rules on its own motion."[20/] The Commission also has the discretion to accept petitions that were filed after the

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18/ While attacking AT&T's petition on procedural grounds, Verizon offers no substantive support for the access charge recovery scheme mandated by the Commission. This is probably because, as AT&T pointed out in its Petition, the Commission's decision in the *Third NRO Order* ran against the advice of virtually every commenter that addressed this issue in the number optimization proceedings, including Verizon (then Bell Atlantic) and its fellow ILECs. *See* Petition at n.13 (citing Bell Atlantic Comments at 6, *First NRO NPRM*).

19/ *See Application of Columbia Millimeter Communications, LP to Provide 39 GHz Point-to-Point Microwave Radio Service on Station WPNA659, Santa Cruz, California*, 15 FCC Rcd 10251, ¶ 9 (2000); *see also Applications of Gross Telecasting, Inc. For Renewal of Licenses of Stations WJIM, WJIM-FM, WJIM-TV, Lansing, Michigan*, 55 FCC 2d 295, n.1 (1975).

20/ *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Board on Universal Service*, 12 FCC Rcd 22423, n.8 (1997) ("*Universal Service Order*") (Commission has authority to reconsider its own rules "in light of pending petitions for reconsideration in this proceeding); *Central Florida Enterprises, Inc. v. FCC*, 598 F.2d 37, 48 n.51 (D.C. Cir. 1978), cert. dismissed, 441 U.S. 957 (1979), cert denied, 460 U.S. 1084 (1983) (filing of petition for reconsideration of any order in a proceeding tolls the running of the 30-day period for FCC *sua sponte* reconsideration "as to all orders in the case").

close of the record, but before a decision was reached, especially in those cases "where the public interest demands that the merits of such a deficient petition be considered."[21/]

As explained above, on the deadline for reconsideration of the *Third NRO Order*, neither AT&T nor the Commission could have anticipated the expansive interpretation the ILECs would give to "eligible costs" in their yet to be filed pooling tariffs; nor could they have foreseen the magnitude of the alleged pooling costs that would be recovered from IXCs. Accordingly, even if the Commission decides not to consider AT&T's Petition, it should reconsider on its own motion its decision to allow ILECs to recover pooling costs through access charges.[22/] Regardless of the Petition's timeliness, retaining the current cost recovery scheme would not serve the public's interest in enhancing competition or providing better quality services at lower rates to consumers.

[21/] *Applications of Franklin D. R. McClure, et al., for Construction Permits*, 5 FCC 2d 148, n.3 (1966). Citing a footnote in the Commission's *CPNI* case, 14 FCC Rcd 15550, ¶ 132 n.318 (1999), Verizon contends that the Commission lacks discretion to waive the timely filing requirement in Section 405 of the Communications Act. *See* Verizon Comments at n.5. As the court cases cited in that *CPNI* footnote make clear, however, Section 405 does not absolutely prohibit Commission consideration of untimely petitions for reconsideration. *See, e.g., Virgin Islands Tel. Corp. v. FCC*, 989 F.2d 1231, 1237 (D.C. Cir. 1993). Indeed, as discussed above, on a number of occasions when the public interest so warranted, the Commission has accepted late-filed petitions. Moreover, notwithstanding the Commission's denial of the motion to accept the untimely pleading in *CPNI*, it treated the petition as an informal comment and addressed the issues raised therein on the merits.

[22/] *See, e.g.*, 47 C.F.R. § 1.108 (allowing the Commission to set aside any action on its own motion). In its universal service proceedings, the Commission took this approach and reconsidered *sua sponte* a portion of its previous order that required universal service contributions to be collected on a quarterly basis. *See Universal Service Order*, ¶ 3. Significantly, the Commission's decision to re-open the case was based on a request from an affected party to the proceeding. *Id*.

CONCLUSION

For the foregoing reasons and the reasons set forth in its Petition and in WorldCom's comments, AT&T respectfully requests that the Commission reconsider its decision to allow ILECs to recover pooling costs through access charges.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Angela Collins, do hereby certify that on this 8th day of July, 2002, a copy of the foregoing "AT&T Corp. Reply Comments on Petitions for Reconsideration" was served via electronic mail on the following:

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